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SUBJECT: President Signs Communications Amendments Act

REF: 08 Nairobi 2850

¶1. (U) Summary: A recent political firestorm over the Kenya Communications Amendment Act of 2008 (the Act), while containing some trouble spots, in essence provided a positive opportunity in which Kenyans once again demonstrated their democratic credentials. President Mwai Kibaki signed the Act into law on December 30, 2008 over the opposition of Prime Minister Raila Odinga, media owners, and journalists to certain provisions of the Act (Reftel). When signing the Act, Kibaki acknowledged its flaws and called for dialogue. On January 6 Kibaki ordered the Attorney General and Minister of Information to meet with media owners to find a solution. We believe that the dialogue is likely to result in the government suggesting amendments to the Act, possibly at a special session of Parliament set to begin on January 20. End Summary.

Communications Amendments Act of 2008

¶2. (U) President Mwai Kibaki signed the 2008 Kenya Communications Amendments Act of 2008 (the Act) into law on December 30. The Act amends the Kenya Communications Act of 1998. The goal of the Act is to regulate better the booming information technology industry (e-mail, texting, etc.) and e-commerce activities which were largely unregulated by the 1998 Act. Before submitting the Act to the Tenth Parliament, the Minister of Information and Communications Samuel Poghiso consulted broadly with media owners and journalists and, according to our media sources, promised to amend several objectionable clauses (Reftel). However, the bill submitted to Parliament in July 2008 failed to address these issues. It also added provisions expanding the power of the Communications Commission of Kenya (CCK) and others which give the Minister of Information the ability to influence politically the CCK.

¶3. (U) Parliament debated the Act in a cursory fashion and passed it on December 10, with less than a quorum - which, under Parliament's rules of procedure, is allowed if no member moves to end debate for lack of a quorum. Although Prime Minister Odinga publicly criticized the Act and blamed his Party of National Unity (PNU) coalition partners for supporting the Act, more MPs from Odinga's Orange Democratic Movement MPs voted for the bill than did PNU MPs.

Kibaki Signs, Then Orders Dialogue

¶4. (U) On December 30, President Kibaki signed the Act. His office took out a full-page ad in major newspapers acknowledging that the Act had flaws, but that the communications field would benefit from the regulation provided by the Act. In the ad, Kibaki called for dialogue to resolve problematic provisions restricting media

freedom. The signing was followed by an outcry in the media and a counter-offensive by the government, including ill-advised pamphlets criticizing media owners paid for by the government spokesman. On January 6, Kibaki ordered the Attorney General (AG) Amos Wako and the Minister of Information to engage in consultations with media owners for the purpose of preparing further amendments to the Act. Media owners quickly accepted the offer.

15. (SBU) Comment: The overarching goal of the Act to update the regulatory framework for media, information technology, and e-commerce is welcome. At the same time, provisions of the Act allowing the government to bring political pressure on media outlets are problematic and should be amended. The Ambassador weighed in with the government urging it to engage in dialogue and to affirm media freedom. We believe Kibaki reacted appropriately and democratically -- the dominant stakeholders cried foul, and the President ordered the AG and Minister of Information to seek compromise through consultations. The media owners' acceptance of the offer provides a way out for both sides. We continue to reach out to both sides to encourage a mutually agreeable solution to the issues. If talks progress rapidly, the government may initiate an effort to amend the Act at a special session of parliament scheduled to begin on January 20. End Comment.

RANNEBERGER